

## 27.201-2 Contract clauses.

(a)

(1) Insert the clause at [52.227-1](#), Authorization and Consent, in solicitations and contracts except that use of the clause is-

(i) Optional when using simplified acquisition procedures; and

(ii) Prohibited when both complete performance and delivery are outside the United States.

(2) Use the clause with its Alternate I in all R&D solicitations and contracts for which the primary purpose is R&D work, except that this alternate shall not be used in construction and architect-engineer contracts unless the contract calls exclusively for R&D work.

(3) Use the clause with its Alternate II in solicitations and contracts for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body.

(b) Insert the clause at [52.227-2](#), Notice and Assistance Regarding Patent and Copyright Infringement, in all solicitations and contracts that include the clause at [52.227-1](#), Authorization and Consent.

(c)

(1) Insert the clause at [52.227-3](#), Patent Indemnity, in solicitations and contracts that may result in the delivery of commercial items, unless-

(i) [part 12](#) procedures are used;

(ii) The simplified acquisition procedures of [part 13](#) are used;

(iii) Both complete performance and delivery are outside the United States; or

(iv) The contracting officer determines after consultation with legal counsel that omission of the clause would be consistent with commercial practice.

(2) Use the clause with either its Alternate I (identification of excluded items) or II (identification of included items) if-

(i) The contract also requires delivery of items that are not commercial items; or

(ii) The contracting officer determines after consultation with legal counsel that limitation of applicability of the clause would be consistent with commercial practice.

(3) Use the clause with its Alternate III if the solicitation or contract is for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body.

(d)

(1) Insert the clause at [52.227-4](#), Patent Indemnity-Construction Contracts, in solicitations and

contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. Do not insert the clause in contracts solely for architect-engineer services.

(2) If the contracting officer determines that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the clause with its Alternate I. Note that this exclusion is for items, as distinguished from identified patents (see paragraph (e) of this subsection).

(e) It may be in the Government's interest to exempt specific U.S. patents from the patent indemnity clause. Exclusion from indemnity of identified patents, as distinguished from items, is the prerogative of the agency head. Upon written approval of the agency head, the contracting officer may insert the clause at [52.227-5](#), Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause.

(f) If a patent indemnity clause is not prescribed, the contracting officer may include one in the solicitation and contract if it is in the Government's interest to do so.

(g) The contracting officer shall not include in any solicitation or contract any clause whereby the Government agrees to indemnify a contractor for patent infringement.

**Parent topic:** [27.201 Patent and copyright infringement liability.](#)